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11 UNITED STATES DISTRICT COURT
12 NORTHERN DISTRICT OF CALIFORNIA
13 OAKLAND DIVISION
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15 JAMES KNAPP, individually and on
behalf of all others similarly situated,

16 Plaintiff,

17 v.

18 ART.COM, INC., a California
19 corporation; and DOES 1 through 50,
inclusive,

20 Defendants.
21
22

CASE NO.:

CLASS ACTION COMPLAINT

1. California False Advertising Law
2. California Unfair Competition Law
3. Unjust Enrichment and Common Law Restitution

DEMAND FOR JURY TRIAL

1 Plaintiff James Knapp (“Plaintiff”), on behalf of himself and all others
2 similarly situated, brings this action against Defendant Art.com, Inc. and Does 1
3 through 50 (“Art.com” or “Defendant”) to recover monetary damages, injunctive
4 relief, and other remedies for violations of California laws. Plaintiff makes the
5 following allegations on information and belief, except as to allegations pertaining
6 to Plaintiff individually, which is based on his personal knowledge.

7 **INTRODUCTION**

8 1. Art.com owns and operates several highly successful online commerce
9 (hereinafter, “E-commerce”) websites that sell posters and other home décor
10 products. During the statute of limitations period, and continuing to this day,
11 Art.com has created, maintained, and implemented an online advertising and sales
12 campaign that is false, misleading and deceptive.

13 2. Specifically, Art.com deceives consumers throughout the United States,
14 who are browsing online via its E-commerce websites, www.art.com,
15 www.posters.com, and www.allposters.com, by offering perpetual sales. These
16 sales are perpetual because they never end; there is generally zero lag time between
17 the end of one sale and the beginning of another sale. Because the merchandise is
18 perpetually on sale, the so-called sale price is actually the price at which Art.com
19 regularly offers for sale, and sells, its merchandise.

20 3. Art.com has willfully engaged in this deceptive and unlawful conduct
21 for one purpose – to maximize profits. Consumers, like Plaintiff, who are browsing
22 Art.com’s websites, are deceived into purchasing merchandise because they are
23 likely to believe that the purported sale (and consequently the discounted price) is
24 going to end, when in reality, Art.com simply replaces the sale with another sale.

25 4. As a result of Art.com’s unlawful scheme, Art.com has been able to
26 overcharge Plaintiff and other Class members for merchandise, induce purchases
27 that would otherwise not have occurred, and/or obtain wrongful profits. Art.com’s
28 misconduct has caused Plaintiff and Class members to suffer significant damages.

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d)(2), because this is a class action, including claims asserted on behalf of a nationwide class, filed under Rule 23 of the Federal Rules of Civil Procedure; there are hundreds of thousands of proposed Class members; the aggregate amount in controversy exceeds five million dollars; and Art.com, Inc. is a citizen of a state different from that of members of the Class. This Court also has subject matter jurisdiction over the claims of Plaintiff and the proposed Class pursuant to 28 U.S.C. § 1367(a).

6. This Court has personal jurisdiction over Art.com because: a substantial portion of the wrongdoing alleged in this Complaint took place in the State of California; Art.com is California corporation that maintains its corporate headquarters in Emeryville, California; and Art.com is authorized to do business in the State of California, has sufficient minimum contacts with the State of California, and/or otherwise intentionally avails itself of the markets in the State of California through the promotion, marketing, and sale of products and services in this State, to render the exercise of jurisdiction by this Court permissible under traditional notions of fair play and substantial justice.

7. Venue is proper in this District under 28 U.S.C. §§ 1391(a)-(d) because the headquarters of Art.com are located in the Northern District of California and because substantial parts of the events or omissions giving rise to the claims occurred in this District and/or a substantial part of property that is the subject of this action is situated in this District.

PLAINTIFF

8. Plaintiff is a United States citizen and currently resides in Los Angeles, California. On October 11, 2015, Plaintiff purchased a framed piece of artwork from Art.com online through the www.art.com website.

1 “From the moment you browse our site to the day your art is delivered, our
2 team has one goal in mind: to delight you, every step of the way. From
3 Basquiat to Van Gogh and every style in between, Art.com features an
4 unparalleled assortment of fine art, limited edition and exclusive pieces,
5 specialty prints, tapestries, reproductions of contemporary originals,
6 handpainted originals, photography, vintage art and more. Sophisticated
7 mobile and visual search tools make it fun to explore Art.com’s vast
8 collection of more than one million works and preview artwork on your own
9 walls.”

10 13. On information and belief, Art.com owns and operates the E-commerce
11 website www.posters.com. At the bottom of the www.posters.com website it states,
12 “POSTERS.COM, A DIVISION OF ART.COM INC.” *See, infra*, Figure 11.

13 14. AllPosters.com, which has been owned and operated by Art.com during
14 the relevant period, also specializes in the sale of wall décor products, primarily
15 through the E-commerce website www.allposters.com. On information and belief,
16 in or around 2005, and well outside the statute of limitations period, AllPosters.com
17 merged with Art.com to form a single company. AllPosters.com is a brand name
18 that is owned and operated by Art.com. On the www.art.com website, Art.com lists
19 AllPosters.com as one of its “brands.”

20 15. The E-commerce website www.allposters.com is the primary, if not
21 only, means by which consumers, in the State of California and throughout the
22 United States, can purchase merchandise from AllPosters.com. On its website,
23 AllPosters.com similarly advertises itself as “the world’s largest online retailer of
24 wall décor.” AllPosters.com further advertises on its E-commerce website as
25 follows:

26 “With its unparalleled assortment, AllPosters.com is a ‘one-stop-shop’ for
27 finding unique items that can't be found anywhere else, in a variety of
28 formats: everything from posters and prints to wall signs, wall murals, stand-
ups and even T-shirts. In addition to offering the world’s largest assortment
of classic posters and art prints, the site also features the latest trends in pop
culture, music, movies, TV, sports, college, and humor.”

1 16. According to Internet Retailer Guide's Top 500 E-Commerce Guide,
2 for the year 2015, Art.com was ranked number 134 on the list of the largest U.S. and
3 Canadian E-commerce retailers.

4 17. Art.com boasts on its E-commerce website www.art.com that it has
5 "[m]ore than 17 million customers in 120 countries worldwide"

6 18. Art.com has reaped tremendous profits from online sales, which
7 continue to increase year after year, as demonstrated in the table below:

Year	Web Sales
2014	\$248,000,000
2013	\$216,000,000
2012	\$179,550,000
2011	\$171,000,000
2010	\$166,321,273

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16 Internet Retailer Guide's Top 500 E-Commerce Guide.

17 19. According to Internet Retailer Guide's Top 500 E-Commerce Guide, in
18 the year 2014, 74% of all traffic on www.art.com was attributed to new shoppers,
19 while return shoppers accounted for 26% of website traffic. Art.com has derived,
20 and continues to derive, substantial profits from the misleading advertising of false
21 sales to both new and returning online customers.

22 **The Unlawful Conduct Stems from California**

23 20. All of the unlawful conduct alleged herein occurred in the State of
24 California. Art.com controls all business activities and decisions of Art.com and
25 AllPosters.com out of its corporate headquarters located in Emeryville, California.
26 The misleading marketing, advertising, and sales information alleged herein was
27 conceived, reviewed, approved, controlled and disseminated from Art.com's
28 headquarters in Emeryville, California.

1 21. At the direction of its corporate officers and board of directors – most if
2 not all of whom work and reside in Emeryville, California – Art.com creates,
3 implements, designs, utilizes, maintains and disseminates the false and deceptive
4 advertising, marketing, and business and profit models that are the subject of this
5 lawsuit. All significant decisions regarding marketing and advertising, including the
6 unlawful conduct alleged herein, were made within California.

7 22. The injuries suffered by Plaintiff and Class members were caused by
8 Art.com’s false advertising that originated from Art.com’s headquarters in
9 Emeryville, California, and was carried out, and inflicted upon consumers, from
10 there to consumers throughout California and the United States through Art.com’s
11 E-commerce websites (www.art.com, www.posters.com, and www.allposters.com).

12 23. On information and belief, when Plaintiff and Class members
13 purchased merchandise through Art.com’s E-commerce websites, the billing and
14 payment for those transactions was processed on Art.com’s servers located in
15 Emeryville, California. On further information and belief, Art.com has developed
16 its E-commerce websites with a combination of in-house and outsourced
17 technology. All technological operations were created, designed, contracted,
18 implemented, modified, and/or maintained in the State of California.

19 24. Art.com has been named as a defendant in several patent lawsuits, in
20 which various companies have alleged that Art.com has infringed upon their patents
21 pertaining to software programming. For instance, one company has alleged that
22 Art.com infringed upon its patent regarding the “method of triggering a selected
23 machine event in a system including a multiplicity of computer controlled machines
24 and a multiplicity of users. One such machine event includes sending reminder
25 emails to online shoppers who place items in their online shopping carts and then
26 delay purchasing items in their online shopping carts.” *See Complaint, Ubicomm*
27 *LLC v. Art.com, Inc. d/b/a AllPosters*, Case No. 1:13-cv-01018-RGA (Del. June 6,
28 2013).

1 25. Thus, on information and belief, an integral part of Art.com’s business
 2 and profitability stems from its complex computer software, some of which Art.com
 3 has intentionally designed to advertise deceptive sales to online consumers.

4 26. On the “TERMS OF SALE” page of www.art.com, under the header,
 5 “APPLICABLE LAW,” Art.com requires that, “The offers by Art.com, Inc., your
 6 orders, and the agreements between us for the delivery of or services and products
 7 are subject to the laws of the State of California. The state or federal courts located
 8 in Alameda County, California will have exclusive jurisdiction to settle any dispute
 9 between us in or relation to our products or services.” The “APPLICABLE LAW”
 10 provision quoted herein purports to have been updated as of “April 2015.”

11 27. Similarly, on the “TERMS OF SALE” page of www.allposters.com,
 12 under the header “Applicable Law,” Art.com requires that, “The offers by Art.com,
 13 Inc., your orders, and the agreements between us for the delivery of our services and
 14 products are subject to the laws of the State of California. The state or federal courts
 15 located in Alameda County, California will have exclusive jurisdiction to settle any
 16 dispute between us in relation to our products or services.” The “Applicable Law”
 17 provision quoted herein purports to have been updated as of “August 2015.”

18 **Art.com’s Unlawful Perpetual Sales**

19 28. By and through the three E-commerce websites www.art.com,
 20 www.posters.com, and www.allposters.com, Art.com implements a scheme to
 21 deceive consumers into believing they are being offered a discount from Art.com’s
 22 regular prices when, in fact, they are not.

23 **www.posters.com**

24 29. When a consumer visits the E-commerce website www.posters.com,
 25 various merchandise is advertised – all of which are purportedly on sale. For
 26 instance, on January 29, 2016, advertised on the homepage of www.posters.com,
 27 was a “Deadpool Comic Book Poster” for “\$8.44 With 35% Coupon AWR946.” In
 28

1 a text box it also says, “~~\$12.99~~ ADD TO CART.” *See* Figure 1 (Sale advertised on
2 www.posters.com on January 29, 2016).

3 30. When the consumer then clicks on the “Add to Cart” button – which is
4 the only means of purchasing the product on the www.posters.com website – the
5 consumer is automatically redirected to www.allposters.com, and the item is also
6 automatically added to the consumer’s shopping cart on www.allposters.com. *See*
7 Figure 2 (on January 29, 2016, the consumer is automatically redirected to
8 www.allposters.com after clicking “ADD TO CART” on www.posters.com).

9 31. Art.com provides a six-character code on all three of its E-commerce
10 websites (hereinafter referred to as “Sale Code”), which changes with each sale, and
11 which consumers can enter at the time of checkout in order to take advantage of the
12 purported sale. *See* Figure 3 (on January 29, 2016, after clicking on the “Checkout”
13 button, the consumer is given the option of entering the Sale Code).

14 32. On January 29, 2016, www.allposters.com had a 35% sale with the
15 same coupon code “AWR946,” and www.art.com also had a 35% sale with a
16 different coupon code.

17 33. Art.com essentially uses www.posters.com as a conduit to redirect
18 consumers to www.allposters.com. Thus, the specific allegations regarding
19 Art.com’s false and deceptive pricing scheme are focused on www.art.com and
20 www.allposters.com, below.

21 **www.art.com and www.allposters.com**

22 34. The E-commerce websites www.art.com and www.allposters.com have
23 sales that mirror each other: they both have a similar design layout, wherein sales
24 are perpetually listed at the top of each homepage.

25 35. During the relevant time period, and continuing to this day, Art.com
26 prominently displays at the top of its E-commerce websites, www.art.com and
27 www.allposters.com, sales that are designed to falsely induce consumers to purchase
28 their products under the mistaken belief that they are getting a significant bargain.

1 These sales (hereinafter referred to as “Perpetual Sales”) are substantially identical
2 on each website. Specifically, www.art.com and www.allposters.com have the same
3 Perpetual Sales ranging from 30% to 50% off the “regular price.” *See* Figures 4 and
4 5 (Examples of Perpetual Sales advertised on www.art.com and
5 www.allposters.com on October 13, 2015).

6 36. Art.com also regularly advertises another separate sale in a text box
7 right below the Perpetual Sale advertised at the top of the website.¹ These sales
8 (hereinafter referred to as “Concurrent Sales”) run at the same time as the Perpetual
9 Sales. The Concurrent Sale, on occasion, differs from the Perpetual Sale (i.e., the
10 Concurrent Sale offers a different discount off the regular price from the Perpetual
11 Sale). For instance, on October 25, 2015, Art.com advertised a Perpetual Sale of
12 “40% OFF ALL ORDERS* – TODAY ONLY ENDS 10/25/15” at the top of the
13 www.art.com website, but in an orange text box right below it, there was a
14 Concurrent Sale advertised for “45% EVERYTHING* ENDS TODAY.” The Sale
15 Code for the Perpetual Sale was “WRA437” and the Sale Code for the Concurrent
16 Sale was “XYM747.” *See* Figure 6 (Example of Concurrent Sale advertised on
17 www.art.com on October 25, 2015 that differs from the Perpetual Sale).

18 37. Similarly, on October 25, 2015, Art.com advertised a Perpetual Sale of
19 “40% OFF EVERYTHING* TODAY ONLY” at the top of the www.allposters.com
20 website, but in a black text box right below it, there was a Concurrent Sale
21 advertised for “45% OFF EVERYTHING* ENDS TODAY.” The Sale Code for the
22 Perpetual Sale was “RDW994” and the Sale Code for the Concurrent Sale was
23 “ZRW347.” *See* Figure 7 (Example of Concurrent Sale advertised on
24 www.allposters.com on October 25, 2015 that differs from the Perpetual Sale).

25
26 ¹ Sometimes there are no sales listed in this text box, and instead there are simply
27 advertisements for different products. For instance, on October 13, 2015, there was
28 an advertisement regarding custom framing. *See, e.g., supra*, Figure 4 (relevant
provision circled in blue).

1 38. On other occasions, the Concurrent Sale corresponds with the Perpetual
2 Sale (i.e., both sales purportedly offer the same discount off the regular price and
3 have the same Sale Code). For instance, on November 17, 2015, Art.com advertised
4 a Perpetual Sale of “45% OFF ALL ORDERS – TODAY ONLY ENDS 11/17/15”
5 at the top of the www.art.com website, and in a black text box right below it, there
6 was a Concurrent Sale advertised for “45% OFF EVERYTHING* OFFER
7 EXTENDED – ENDS TODAY.” The Sale Code for both the Perpetual Sale and the
8 Concurrent Sale was “FRT343.” *See* Figure 8 (Example of Concurrent Sale
9 advertised on www.art.com on November 17, 2015 that is the same as the Perpetual
10 Sale).

11 39. Similarly, on November 17, 2015, Art.com advertised a Perpetual Sale
12 of “45% OFF EVERYTHING* TODAY ONLY” at the top of the
13 www.allposters.com website, and in an orange text box right below it, there was a
14 Concurrent Sale advertised for “45% OFF EVERYTHING* OFFER EXTENDED –
15 ENDS TODAY.” The Sale Code for both the Perpetual Sale and the Concurrent
16 Sale was “PLR963.” *See* Figure 9 (Example of Concurrent Sale advertised on
17 www.allposters.com on November 17, 2015 that is the same as the Perpetual Sale).

18 40. The variation between the Perpetual Sales and the Concurrent Sales –
19 in which sometimes they are the same and sometimes they are different – further
20 illustrates that these are not bona fide sales, but rather, they are nothing more than
21 marketing ploys to deceive consumers into believing they are getting a bargain deal.

22 41. Thus, Art.com does not actually offer for sale or sell its merchandise at
23 the advertised regular price. Instead, Art.com conducts sale after sale. Because the
24 merchandise is perpetually on sale, the so-called sale price is actually the price at
25 which Art.com regularly offers for sale, and sells, its merchandise.

26 42. Art.com’s merchandise has been continually on sale for years, even
27 though each advertised sale is described as being of limited duration (for varying
28 periods of time, usually between one and two days), thus creating the false and

misleading impression that the price will increase back to the regular price if a consumer does not make a purchase by the end of the sale. In fact, the price does not increase back to the regular price at the conclusion of the sale, as each sale is simply followed by another one.

43. The short lived sales on Art.com's websites end at "23:59 in your local time zone" on the date for which the sale purportedly ends. *See* Figure 10 (Example of a pop-up window on www.allposters.com on December 4, 2015, when a consumer clicks on the "See Offer Details" link right below the advertised Perpetual Sale).

44. There is also a disclaimer at the bottom of the www.posters.com website that states, "DISCLAIMER. All deals end at 11:59PM Pacific Standard Time on the stated end date." *See* Figure 11 (the bottom of the homepage of www.posters.com on January 29, 2016).

45. There is generally zero lag time between the end of one sale and the beginning of another sale. The www.art.com and www.allposters.com websites are programmed to automatically generate, and prominently advertise, a new sale between 12:00 p.m. on the end date of the sale and 12:05 a.m. on the day after the end date of the sale. On the www.art.com website, the new sale is frequently regenerated at approximately 11:59 p.m. on the sale end date – even before the previous sale was advertised to expire.

46. As depicted in the tables below, Art.com continuously and without interruption offers Perpetual Sales at top of their E-commerce websites:

Perpetual Sales: www.art.com

Sale Start Date	Sale End Date	Sale Description	Sale Code
10/12/15	10/12/15	"45% OFF ALL ORDERS* - TODAY ONLY" "ENDS 10/12/15"	"MZN898"
10/13/15	10/13/15	"45% OFF SALE EXTENDED* - ENDS TONIGHT" "ENDS 10/13/15"	"MZN898"
10/14/15	10/14/15	"35% OFF ALL ORDERS* - ENDS TODAY" "ENDS 10/14/15"	"NHH798"
10/15/15	10/16/15	"35% OFF ALL ORDERS* - ENDS	"PKT398"

		TOMORROW” “ENDS 10/16/15”	
10/16/15	10/16/15	“35% OFF ALL ORDERS* - ENDS TODAY” “ENDS 10/16/15”	“PKT398”
10/17/15	10/17/15	“40% OFF FRAMED ART* - TODAY ONLY” “ENDS 10/17/15”	“RMR696”
10/18/15	10/18/15	“40% OFF ALL ORDERS* - TODAY ONLY” “ENDS 10/18/15”	“RPP498”
10/19/15	10/19/15	“45% OFF ALL ORDERS* - TODAY ONLY” “ENDS 10/19/15”	“YMD463”
10/20/15	10/20/15	“45% OFF ALL ORDERS - EXTENDED” “ENDS 10/20/15”	“YMD463”
10/21/15	10/21/15	“30% OFF ALL ORDERS* - TODAY ONLY” “ENDS 10/21/15”	“KDK643”
10/22/15	10/23/15	“35% OFF ALL ORDERS* - ENDS TOMORROW” “ENDS 10/23/15”	“TTY836”
10/23/15	10/23/15	“35% OFF ALL ORDERS* - ENDS TODAY” “ENDS 10/23/15”	“TTY836”
10/24/15	10/24/15	“35% OFF FRAMED ART* - TODAY ONLY” “ENDS 10/24/15”	“WEL333”
10/25/15	10/25/15	“40% OFF ALL ORDERS* - TODAY ONLY” “ENDS 10/25/15”	“WRA437”
10/26/16	10/26/15	“45% OFF ALL ORDERS* - TODAY ONLY” “ENDS 10/26/15”	“XYM747”
10/27/15	10/27/15	“45% OFF ALL ORDERS - EXTENDED” “ENDS 10/27/15”	“HKN339”
10/28/15	10/28/15	“30% OFF ALL ORDERS - TODAY ONLY” “ENDS 10/28/15”	“ELD646”
10/29/15	10/30/15	“35% OFF ALL ORDERS – ENDS TOMORROW” “ENDS 10/30/15”	“ZTG734”
10/30/15	10/30/15	“35% OFF ALL ORDERS – ENDS TODAY” “ENDS 10/30/15”	“ZTG734”
10/31/15	10/31/15	“40% OFF FRAMED ART* - TODAY ONLY” “ENDS 10/31/15”	“ZTF736”
11/1/15	11/1/15	“40% OFF ALL ORDERS – TODAY ONLY” “ENDS 11/1/15”	“AGR797”
11/2/15	11/2/15	“45% OFF ALL ORDERS – TODAY ONLY” “ENDS 11/2/15”	“ANT378”
11/3/15	11/3/15	“45% OFF ALL ORDERS – TODAY ONLY” “ENDS 11/3/15”	“CAA987”
11/4/15	11/4/15	“35% OFF ALL ORDERS – TODAY ONLY” “ENDS 11/4/15”	“CCH838”
11/5/15	11/6/15	“35% OFF ALL ORDERS – ENDS TOMORROW” “ENDS 11/6/15”	“CDE834”
11/6/15	11/6/15	“35% OFF ALL ORDERS – ENDS TODAY” “ENDS 11/6/15”	“CDE834”
11/7/15	11/7/15	“35% OFF ALL ORDERS – TODAY ONLY” “ENDS 11/7/15”	“CGX439”
11/8/15	11/8/15	“40% OFF ALL ORDERS – TODAY ONLY” “ENDS 10/30/15”	“CHF389”
11/9/15	11/9/15	“45% OFF ALL ORDERS – TODAY ONLY” “ENDS 11/9/15”	“DMK646”
10/10/15	11/10/15	“45% OFF ALL ORDERS – TODAY ONLY” “ENDS 11/10/15”	“DPK466”
11/11/15	11/12/15	“35% OFF ALL ORDERS – ENDS	“DZH398”

		TOMORROW” “ENDS 11/12/15”	
11/12/15	11/12/15	“35% OFF ALL ORDERS – ENDS TODAY” “ENDS 11/12/15”	“DZH398”
11/13/15	11/14/15	“35% OFF ALL ORDERS – ENDS TOMORROW” “ENDS 11/14/15”	“ELE994”
11/14/15	11/14/15	“35% OFF ALL ORDERS – ENDS TODAY” “ENDS 11/14/15”	“ELE994”
11/15/15	11/15/15	“40% OFF ALL ORDERS – TODAY ONLY” “ENDS 11/15/15”	“ERN788”
11/16/15	11/16/15	“45% OFF ALL ORDERS – TODAY ONLY” “ENDS 11/16/15”	“FRR936”
11/17/15	11/17/15	“45% OFF ALL ORDERS – TODAY ONLY” “ENDS 11/17/15”	“FRT343”
11/18/15	11/18/15	“35% OFF ALL ORDERS – TODAY ONLY” “ENDS 11/18/15”	“FXA646”
11/19/15	11/20/15	“35% OFF ALL ORDERS – ENDS TOMORROW” “ENDS 11/20/15”	“GGE897”
11/20/15	11/20/15	“35% OFF ALL ORDERS – ENDS TODAY” “ENDS 11/20/15”	“GGE897”
11/21/15	11/22/15	“40% OFF ALL ORDERS – ENDS TOMORROW” “ENDS 11/22/15”	“HLN848”
11/22/15	11/22/15	“40% OFF ALL ORDERS – ENDS TODAY” “ENDS 11/12/15”	“HLN848”
11/23/15	11/23/15	“40% OFF ALL ORDERS – TODAY ONLY” “ENDS 11/23/15”	“KAA897”
11/24/15	11/24/15	“40% OFF ALL ORDERS – TODAY ONLY” “ENDS 11/24/15”	“KAA897”
11/25/15	11/27/15	“45% OFF ALL ORDERS – ENDS FRIDAY” “ENDS 11/27/15”	“BLACK FRIDAY”
11/1/15	11/27/15	“45% OFF ALL ORDERS – ENDS TOMORROW” “ENDS 11/27/15”	“BLACK FRIDAY”
11/27/15	11/27/15	“BLACK FRIDAY – 45% OFF ALL ORDERS” “ENDS 11/27/15”	“BLACK FRIDAY”
11/28/15	11/28/15	“BLACK FRIDAY EXTENDED – 45% OFF TODAY ONLY” “ENDS 11/28/15”	“BLACK FRIDAY”
11/29/15	11/29/15	“45% OFF ALL ORDERS – TODAY ONLY” “ENDS 11/29/15”	“XEL786”
11/30/15	11/30/15	“CYBER MONDAY – 50% OFF ALL ORDERS” “ENDS 11/30/15”	“CYBER MONDAY”
12/1/15	12/1/15	“50% OFF – CYBER MONDAY EXTENDED” “ENDS 12/1/15”	“CYBER MONDAY”
12/2/15	12/2/15	“45% OFF ALL ORDERS – TODAY ONLY” “ENDS 12/2/15”	“NGC479”
12/3/15	12/4/15	“45% OFF ALL ORDERS – ENDS TOMORROW” “ENDS 12/4/15”	“DDA787”
12/4/15	12/4/15	“45% OFF ALL ORDERS – ENDS TODAY” “ENDS 12/4/15”	“DDA787”
12/5/15	12/13/15	“45% OFF ALL ORDERS* – ENDS SOON” “ENDS 12/13/15”	“WEW686”
12/6/15	12/13/15	“45% OFF ALL ORDERS* – ENDS SOON” “ENDS 12/13/15”	“WEW686”
12/7/15	12/13/15	“45% OFF ALL ORDERS* – ENDS	“WEW686”

		SOON” “ENDS 12/13/15”	
12/8/15	12/8/15	“45% OFF ALL ORDERS – ENDS TODAY” “ENDS 12/8/15”	“ZDC946”
12/9/15	12/9/15	“45% OFF ALL ORDERS* – TODAY ONLY” “ENDS 12/9/15”	“CMC784”
12/10/15	12/10/15	“45% OFF ALL ORDERS* – TODAY ONLY” “ENDS 12/10/15”	“WMK486”
12/11/15	12/11/15	“45% OFF ALL ORDERS* – TODAY ONLY” “ENDS 12/11/15”	“DKY868”
12/12/15	12/12/15	“45% OFF ALL ORDERS* – TODAY ONLY” “ENDS 12/12/15”	“NDR999”
12/13/15	12/13/15	“45% OFF ALL ORDERS* – TODAY ONLY” “ENDS 12/13/15”	“GLM646”
12/14/15	12/14/15	“50% OFF ALL ORDERS – TODAY ONLY” “ENDS 12/14/15”	“WPY986”
12/15/15	12/15/15	“50% OFF OFFER EXTENDED* – ENDS TODAY” “ENDS 12/15/15”	“REN687”
12/16/15	12/16/16	“45% OFF ALL ORDERS* – TODAY ONLY” “ENDS 12/16/15”	“WYR894”
12/17/15	12/17/15	“45% OFF OFFER EXTENDED* – ENDS TODAY” “ENDS 12/17/15”	“XPY897”
12/18/18	12/18/18	“45% OFF ALL ORDERS* – TODAY ONLY” “ENDS 12/18/15”	“KXN474”

Perpetual Sales: www.allposters.com

Sale Start Date	Sale End Date	Sale Description	Sale Code
10/12/15	10/12/15	“45% OFF EVERYTHING* TODAY ONLY”	“KAT998”
10/13/15	10/13/15	“45% OFF EVERYTHING* TODAY ONLY”	“KAT998”
10/14/15	10/14/15	“35% OFF EVERYTHING* TODAY ONLY”	“ART493”
10/15/15	10/16/15	“35% OFF EVERYTHING* ENDS TOMORROW”	“DKW334”
10/16/15	10/16/15	“35% OFF EVERYTHING* ENDS TODAY”	“DKW334”
10/17/15	10/17/15	“35% OFF EVERYTHING* TODAY ONLY”	“NWH479”
10/18/15	10/18/15	“40% OFF EVERYTHING* TODAY ONLY”	“CGM873”
10/19/15	10/19/15	“45% OFF EVERYTHING* TODAY ONLY”	“LRE743”
10/20/15	10/20/15	“45% OFF EVERYTHING* TODAY ONLY”	“LRE743”
10/21/15	10/21/15	“30% OFF EVERYTHING* ENDS TODAY”	“AAR697”
10/22/15	10/23/15	“35% OFF EVERYTHING* ENDS TOMORROW”	“RZN768”
10/23/15	10/23/15	“35% OFF EVERYTHING* ENDS TODAY”	“RZN768”

1	10/24/15	10/24/15	"35% OFF EVERYTHING* TODAY ONLY"	"PPT793"
2	10/25/15	10/25/15	"40% OFF EVERYTHING* TODAY ONLY"	"RDW994"
3	10/26/15	10/26/15	"45% OFF EVERYTHING* TODAY ONLY"	"ZRW347"
4	10/27/15	10/27/15	"45% OFF EVERYTHING* TODAY ONLY"	"ZLG694"
5	10/28/15	10/28/15	"30% OFF EVERYTHING* ENDS TODAY"	"RAW679"
6	10/29/15	10/30/15	"35% OFF EVERYTHING* ENDS TOMORROW"	"MRF884"
7	10/30/15	10/30/15	"35% OFF EVERYTHING* ENDS TODAY"	"MRF884"
8	10/31/15	10/31/15	"35% OFF EVERYTHING* TODAY ONLY"	"RMK346"
9	11/1/15	11/1/15	"40% OFF EVERYTHING* TODAY ONLY"	"RGC643"
10	11/2/15	11/2/15	"45% OFF EVERYTHING* TODAY ONLY"	"GPA747"
11	11/3/15	11/3/15	"40% OFF EVERYTHING* TODAY ONLY"	"MMP684"
12	11/4/15	11/4/15	"35% OFF EVERYTHING* TODAY ONLY"	"CFR776"
13	11/5/15	11/6/15	"35% OFF EVERYTHING* ENDS TOMORROW"	"CCK967"
14	11/6/15	11/6/15	"35% OFF EVERYTHING* ENDS TODAY"	"CCK967"
15	11/7/15	11/7/15	"35% OFF EVERYTHING* TODAY ONLY"	"ARZ983"
16	11/8/15	11/8/15	"40% OFF EVERYTHING* TODAY ONLY"	"HRW389"
17	11/9/15	11/9/15	"45% OFF EVERYTHING* TODAY ONLY"	"TDY976"
18	11/10/15	11/10/15	"45% OFF EVERYTHING* TODAY ONLY"	"FHM687"
19	11/11/15	11/12/15	"35% OFF EVERYTHING* ENDS TOMORROW"	"WXX369"
20	11/12/15	11/12/15	"35% OFF EVERYTHING* ENDS TODAY"	"WXX369"
21	11/13/15	11/14/15	"35% OFF EVERYTHING* ENDS TOMORROW"	"TGL896"
22	11/14/15	11/14/15	"40% OFF EVERYTHING* ENDS TODAY"	"TGL896"
23	11/15/15	11/15/15	"40% OFF EVERYTHING* TODAY ONLY"	"TPN869"
24	11/16/15	11/16/15	"45% OFF EVERYTHING* TODAY ONLY"	"PLR963"
25	11/17/15	11/17/15	"45% OFF EVERYTHING* TODAY ONLY"	"PLR963"
26	11/18/15	11/18/15	"35% OFF EVERYTHING* TODAY ONLY"	"ZWG986"
27	11/19/15	11/20/15	"35% OFF EVERYTHING* ENDS TOMORROW"	"YYC638"
28				

1	11/20/15	11/20/15	"35% OFF EVERYTHING* ENDS TODAY"	"YYC638"
2	11/21/15	11/22/15	"40% OFF EVERYTHING* ENDS TOMORROW"	"KND944"
3	11/22/15	11/22/15	"40% OFF EVERYTHING* ENDS TODAY"	"KND944"
4	11/23/15	11/23/15	"40% OFF EVERYTHING* TODAY ONLY"	"KZM434"
5	11/24/15	11/24/15	"40% OFF EVERYTHING* TODAY ONLY"	"KZM434"
6	11/25/15	11/27/15	"45% OFF EVERYTHING* ENDS FRIDAY"	"BLACK FRIDAY"
7	11/26/15	11/27/15	"45% OFF EVERYTHING* ENDS TOMORROW"	"BLACK FRIDAY"
8	11/27/15	11/27/15	"45% OFF EVERYTHING* ENDS TODAY"	"BLACK FRIDAY"
9	11/28/15	11/28/15	"45% OFF EVERYTHING* TODAY ONLY"	"BLACK FRIDAY"
10	11/29/15	11/29/15	"45% OFF EVERYTHING* TODAY ONLY"	"XEL786"
11	11/30/15	11/30/15	"50% OFF EVERYTHING* TODAY ONLY"	"CYBER MONDAY"
12	12/1/15	12/1/15	"50% OFF EVERYTHING* TODAY ONLY"	"CYBER MONDAY"
13	12/2/15	12/2/15	"45% OFF EVERYTHING* TODAY ONLY"	"PHM394"
14	12/3/15	12/4/15	"45% OFF EVERYTHING* ENDS TOMORROW"	"DDA787"
15	12/4/15	12/4/15	"45% OFF EVERYTHING* TODAY ONLY"	"DDA787"
16	12/5/15	12/13/15	"45% OFF EVERYTHING* ENDS SOON"	"XNZ348"
17	12/6/15	12/13/15	"45% OFF EVERYTHING* ENDS SOON"	"XNZ348"
18	12/7/15	12/8/15	"45% OFF EVERYTHING* ENDS TOMORROW"	"CRP767"
19	12/8/15	12/8/15	"45% OFF EVERYTHING* ENDS TODAY"	"CRP767"
20	12/9/15	12/9/15	"45% OFF EVERYTHING* TODAY ONLY"	"WYC368"
21	12/10/15	12/10/15	"45% OFF EVERYTHING* TODAY ONLY"	"CZR849"
22	12/11/15	12/11/15	"45% OFF EVERYTHING* TODAY ONLY"	"NZC876"
23	12/12/15	12/12/15	"45% OFF EVERYTHING* TODAY ONLY"	"KTL777"
24	12/13/15	12/13/15	"45% OFF EVERYTHING* OFFER EXTENDED – ENDS TODAY"	"XDC469"
25	12/14/15	12/14/15	"50% OFF EVERYTHING* TODAY ONLY"	"DML966"
26	12/15/15	12/15/15	"50% OFF EVERYTHING* OFFER EXTENDED – ENDS TODAY"	"DML966"
27	12/16/16	12/16/16	"45% OFF EVERYTHING* TODAY ONLY"	"YYA738"
28				

12/17/17	12/17/17	“45% OFF EVERYTHING* OFFER EXTENDED – ENDS TODAY”	“WHZ387”
12/18/18	12/18/18	“45% OFF EVERYTHING* OFFER EXTENDED – ENDS TODAY”	“FKZ849”

47. These deceptive sales are marketed to consumers through online search engines. When a consumer searches “posters” on Google, the top ads are for www.allposters.com, www.art.com, and www.posters.com. Some of these ads also represent the Perpetual Sale in order to induce consumers to visit the website. For instance, on January 29, 2016, after searching “posters” on Google, the first ad for AllPosters.com states in relevant part, “Extra 35% Off When You Buy Today!” See Figure 12 (Search result on Google on January 29, 2016 for “posters” yields an ad for www.allposters.com with the Perpetual Sale clearly visible to the consumer).

48. Art.com also advertises these deceptive sales through an email marketing campaign. If a consumer signs up to receive emails, Art.com begins to regularly send emails to that consumer that advertise its Perpetual Sales. For instance, on December 28, 2015, Art.com sent an email with a subject line entitled “45% OFF – The Clock’s Ticking,” reminding consumers that there were only “HOURS LEFT” before the 45% off sale ended. See Figure 13 (December 28, 2015 email sent by allpostersemail@em.allposters.com at approximately 3:04 PM)

49. As part of its comprehensive and complex deceptive marketing campaign, Art.com occasionally advertises sales differently, depending on the platform the consumer is using to browse its E-commerce website and/or the consumer’s IP address and/or the consumer’s browsing/purchase history with Art.com. On any given day, a consumer could potentially see a different sale advertised on one of its E-commerce websites depending on whether the consumer was viewing the website on a mobile device, such as a phone, or on a desktop computer. For instance, on February 14, 2016, a consumer viewing www.allposters.com on a desktop computer saw a Perpetual Sale of “45% OFF EVERYTHING* TODAY ONLY” as well as a “A VALENTINE’S TREAT 45%

1 OFF EVERYTHING* TODAY ONLY” with the same Sale Code of “GRT998” for
 2 both sales. However, a consumer viewing the same website at the same time on a
 3 mobile phone saw a Perpetual Sale of “40% OFF EVERYTHING* - TODAY
 4 ONLY” as well as “A VALENTINE’S TREAT 45% OFF EVERYTHING*
 5 TODAY ONLY.” Interestingly, for the consumer using her mobile phone, the same
 6 Sale Code “GRT998” applied for both the Perpetual Sale and the Valentine’s Day
 7 Sale, even though the two sales were for a discount of 40% and 45%, respectively.

8 50. The fact that consumers can potentially see different sales depending
 9 on the platform they are using to browse Art.com’s E-commerce websites, and/or
 10 other factors, is immaterial to the deceptive nature of the sales because the sales
 11 perpetually exist on some platform – whether it be a computer, phone, or tablet.
 12 Rather, the sophistication of Art.com’s scheme demonstrates the willful nature of its
 13 unlawful conduct.

14 51. Art.com is well aware of its deceptive pricing scheme and essentially
 15 acknowledges that it “misprices” items – presumably, in an effort to shield itself
 16 from disgruntled customers. For instance, on the “Terms of Sale” page on the
 17 www.allposters.com website, Art.com states, in relevant part, “Notwithstanding the
 18 product prices shown on the website, we cannot confirm the price of an item until
 19 you order. Despite our best efforts, a small number of the items shown on the
 20 website may be mispriced as a result of price changes that are implemented at or
 21 about the time of your visit to the website.” See Figure 14 (“Terms of Sale” section
 22 on www.allposters.com on January 29, 2016).

23 **Plaintiff’s Purchase through Art.com’s E-commerce Website**

24 52. On October 11, 2015, Plaintiff was browsing the www.art.com website
 25 in search of piece of framed artwork. Plaintiff saw an item that he liked in the style
 26 of art that he was looking for, but he was not immediately prepared to purchase the
 27 item. Plaintiff noticed the 40% off sale prominently displayed at the top of the
 28 www.art.com website, and further saw that the sale ended at midnight that day.

1 Enticed by the idea of saving 40% off his purchase, Plaintiff went ahead and
 2 purchased the product online, using his credit card, for price of \$133.06. *See* Figure
 3 15 (Email from Art.com confirming Plaintiff's purchase).

4 53. On October 12, 2015, slightly after midnight, the sale at www.art.com
 5 automatically renewed, although this time the sale became 45% of everything.
 6 Plaintiff was induced to purchase the product at "40% off" because he believed that
 7 the sale was ending that day. Had Plaintiff waited until just after midnight – when
 8 the sale that induced him to make the purchase ended – he could have gotten "45%
 9 off" the product he purchased. Plaintiff would not have purchased the product if it
 10 were not for the "40% off sale" advertised on the www.art.com website.

11 54. Consumers were likely to be deceived by Art.com's misrepresentations
 12 that its merchandise was on sale when making their online purchases in that they
 13 would not have rushed to purchase it, would not have purchased it all, or would
 14 have paid substantially less for it, had the misrepresentations not been made. In
 15 reality, Art.com never intended, nor did it ever actually sell, any of its merchandise
 16 at the advertised regular price. Thus, consumers were likely to be deceived by the
 17 false price comparison into making a full retail purchase that was not really on sale.

18 55. As a result of Art.com's misrepresentations, Plaintiff and the Class
 19 have been injured and damaged, all to the financial benefit of Art.com.

20 **CLASS ACTION ALLEGATIONS**

21 56. Plaintiff brings this action pursuant to Rule 23 of the Federal Rules of
 22 Civil Procedure, individually and on behalf of all members of the following Class:

23 All natural persons located within the United States who purchased any
 24 product online from Art.com through the E-commerce websites,
 25 www.art.com, www.posters.com, and/or www.allposters.com, at any time
 26 beginning four (4) years prior to the filing of this action, and ending at the
 time this action settles or proceeds to final judgment.

27 57. Excluded from the Class are the following individuals and/or entities:
 28 Art.com and its parents, subsidiaries, affiliates, officers and directors, current or

1 former employees, and any entity in which Art.com has a controlling interest; all
2 individuals who make a timely election to be excluded from this proceeding using
3 the correct protocol for opting out; and all judges assigned to hear any aspect of this
4 litigation, as well as their immediate family members.

5 58. Plaintiff reserves the right to modify or amend the definition of the
6 proposed Class and/or add subclasses before the Court determines whether
7 certification is appropriate.

8 59. The Class is so numerous that joinder of all members would be
9 impractical. On information and belief, the number of individuals who purchased
10 products online through the www.art.com, www.posters.com, and
11 www.allposters.com E-commerce websites within the relevant time period is in the
12 hundreds of thousands, if not millions. Since the majority, if not all, consumer
13 purchases are made online through the use of a credit card, these individuals are
14 identifiable and ascertainable through Art.com's records.

15 60. There are questions of law and fact common to the Class that will drive
16 the resolution of this action. These questions include, but are not limited to, the
17 following:

- 18 a. Whether Art.com misrepresented the regular price of its products;
- 19 b. Whether Art.com's products are perpetually on sale;
- 20 c. Whether the sale price of Art.com's products is actually the regular
- 21 price at which Art.com offers its products;
- 22 d. Whether Art.com misrepresented that its products were on sale for a
- 23 limited duration, thus creating the false impression that the price of
- 24 the product would increase back to the regular price if a consumer
- 25 did not make a purchase by the end of the purported sale;
- 26 e. Whether Art.com misrepresented material facts and/or failed to
- 27 disclose material facts in connection with the marketing and sale of
- 28 its products;

- f. Whether Art.com's use of false or deceptive price advertising constituted false advertising under California Law;
- g. Whether Art.com engaged in unfair, unlawful and/or fraudulent business practices under California law;
- h. Whether Art.com made false or misleading statements of fact concerning the existence of sales;
- i. Whether Art.com's unlawful conduct, as alleged herein, was intentional and knowing;
- j. Whether Plaintiff and the Class are entitled to damages and/or restitution, and in what amount;
- k. Whether Art.com is likely to continue using false, misleading or unlawful sales such that an injunction is necessary; and
- l. Whether Plaintiff and the Class are entitled to an award of reasonable attorneys' fees, interest, and costs of suit.

61. Art.com engaged in a common course of conduct giving rise to violations of the legal rights sought to be enforced uniformly by Plaintiff and the Class members. Similar or identical statutory and common law violations, business practices, and injuries are involved. Therefore, individual questions, if any, pale in comparison to the numerous common questions presented in this action.

62. The injuries sustained by members of the Class flow, in each instance, from a common nucleus of operative fact. Each instance of harm suffered by Plaintiff and the Class has directly resulted from a single course of illegal conduct – namely, the creation, design, maintenance, and operation of websites that were programmed to automatically, and generally without any lag time, create short-lived sales, in conjunction with other advertising methods, in order to induce consumers to make purchases on their websites. A substantial portion, if not all, of the alleged unlawful conduct occurred in and stemmed from business activities in the State of California.

1 consumers into believing they are getting a significant discount, when in actuality,
2 they are paying the regular or even greater price for the item they are purchasing.

3 71. The FAL specifically prohibits this type of false advertising. Cal. Bus.
4 & Prof. Code § 17501 provides in relevant part, “No price shall be advertised as a
5 former price of any advertised thing, unless the alleged former price was the
6 prevailing market price . . . within three months next immediately preceding the
7 publication of the advertisement or unless the date when the alleged former price did
8 prevail is clearly, exactly and conspicuously stated in the advertisement.”

9 72. Art.com’s false advertisements, as alleged herein, were calculated to
10 induce Plaintiff and Class members to purchase merchandise they otherwise would
11 not have and/or to spend more money than they otherwise would have spent, in
12 order to increase Art.com’s profits.

13 73. Through its unfair acts and practices, Art.com has improperly obtained
14 money from Plaintiff and the Class. As such, Plaintiff requests that this Court cause
15 Art.com to restore this money to Plaintiff and all Class members, and to enjoin
16 Art.com from continuing to violate the FAL in the future.

17 **COUNT II**

18 **Violation of the California Unfair Competition Law**

19 **(On behalf of Plaintiff and the Class against Art.com)**

20 74. Plaintiff incorporates herein by specific reference, as though fully set
21 forth, the allegations in paragraphs 1 through 73.

22 75. Plaintiff and Class members are “persons” within the meaning of Cal.
23 Bus. & Prof. Code § 17204.

24 76. The California Unfair Competition Law (“UCL”), Cal. Bus. & Prof.
25 Code § 17200, *et seq.*, defines unfair business competition to include any “unlawful,
26 unfair or fraudulent” act or practice, as well as any “unfair, deceptive, untrue or
27 misleading” advertising.

28 //

1 77. A business act or practice is “unfair” under the UCL if the reasons,
2 justifications and motives of the alleged wrongdoer are outweighed by the gravity of
3 the harm to the alleged victims. A business act or practice is “fraudulent” under the
4 UCL if it is likely to deceive members of the consuming public. A business act or
5 practice is “unlawful” under the UCL if it violates any other law or regulation.

6 78. Art.com has violated the “unfair” prong of the UCL by misrepresenting
7 a false sale price to induce consumers into believing they are getting a discount,
8 when they are not. Consequently, the regular price of the merchandise is inflated,
9 and the corresponding sale price was nothing more than a false, misleading and
10 deceptive illusion of a discount.

11 79. The business acts and practices alleged herein are unfair because they
12 caused Plaintiff and Class members to falsely believe that Art.com is offering value,
13 discounts or bargains from the prevailing market worth of the products sold that did
14 not exist. As a result, consumers, including Plaintiff, were likely to believe that they
15 were receiving products at a substantially discounted price. This deception was
16 likely to have induced reasonable consumers, including Plaintiff, to buy Art.com
17 merchandise, which they otherwise would not have purchased.

18 80. The gravity of the harm to Plaintiff and Class members resulting from
19 these unfair acts and practices outweighs any conceivable reasons, justifications
20 and/or motives of Art.com for engaging in such deceptive acts and practices. By
21 committing the acts and practices alleged herein, Art.com has engaged in, and
22 continues to engage in, unfair business practices within the meaning of California
23 Business & Professions Code § 17200, *et seq.*

24 81. Art.com has also violated the “unlawful” prong of the UCL. California
25 statutory and regulatory law expressly prohibit false pricing schemes. As referenced
26 above, Cal. Bus. & Prof. Code § 17501 provides in relevant part, “No price shall be
27 advertised as a former price of any advertised thing, unless the alleged former price
28 was the prevailing market price . . . within three months next immediately preceding

1 the publication of the advertisement or unless the date when the alleged former price
2 did prevail is clearly, exactly and conspicuously stated in the advertisement.”

3 82. Art.com violated and continues to violate Cal. Bus. & Prof. Code
4 § 17501 by advertising false discounts from purported former prices that were, in
5 fact, not the prevailing market prices within three months next immediately
6 preceding the publication and dissemination of advertisements containing the false
7 former prices.

8 83. Moreover, sections 15 U.S.C. § 45(a)(1) and 15 U.S.C. § 52(a) of the
9 Federal Trade Commission Act (“FTCA”) also prohibit “unfair or deceptive acts or
10 practices in or affecting commerce,” and like the FAL, specifically prohibit false
11 advertisements. The FTC has established guidelines that prohibit false pricing
12 schemes similar to those implemented by Art.com:

13 One of the most commonly used forms of bargain advertising is to offer a
14 reduction from the advertiser’s own former price for an article. If the former
15 price is the actual, bona fide price at which the article was offered to the
16 public on a regular basis for a reasonably substantial period of time, it
17 provides a legitimate basis for the advertising of a price comparison. Where
18 the former price is genuine, the bargain being advertised is a true one. If, on
19 the other hand, the former price being advertised is not bona fide but fictitious
20 -- for example, where an artificial, inflated price was established for the
21 purpose of enabling the subsequent offer of a large reduction -- the “bargain”
22 being advertised is a false one; the purchaser is not receiving the unusual
23 value he expects. In such a case, the “reduced” price is, in reality, probably
24 just the seller’s regular price.

25 16 C.F.R. § 233.1(a).

26 84. Art.com’s use of and reference to a materially false sale prices in
27 connection with its online marketing and advertisements violated and continues to
28 violate 15 U.S.C. § 45(a)(1) and 15 U.S.C. § 52(a), as well as FTC Guidelines,
published at 16 C.F.R. § 233.

85. Through its unlawful acts and practices, Art.com has improperly
obtained money from Plaintiff and the Class. As such, Plaintiff requests that this

1 Court cause Art.com to restore this money to Plaintiff and the Class, and to enjoin
2 Art.com from continuing to violate the UCL as alleged herein.

3 86. Plaintiff also requests that the Court award reasonable attorneys' fees
4 and costs pursuant to Cal. Code of Civ. Proc. § 1021.5.

5 **COUNT III**

6 **Unjust Enrichment and Common Law Restitution**
7 **(On behalf of Plaintiff and the Class against Art.com)**

8 87. Plaintiff incorporates herein by specific reference, as though fully set
9 forth, the allegations in paragraphs 1 through 86.

10 88. As a result of Art.com's wrongful and deceptive conduct, Plaintiff and
11 Class members have suffered a detriment while Art.com has received a benefit.

12 89. Art.com's misleading, inaccurate and deceptive marketing intentionally
13 cultivates the perception that consumers are being offered a discount from the
14 company's regular prices when they are not. Plaintiff and Class members were
15 intended to rely upon Art.com's misrepresentations when they purchased Art.com's
16 merchandise. Plaintiff and Class members likely would not have purchased
17 Art.com's merchandise, or would have paid significantly less for the merchandise, if
18 Art.com had not misrepresented that the merchandise was on sale.

19 90. Art.com has received a premium price benefit and/or additional sales
20 from Plaintiff and Class members as a result of this unlawful conduct.

21 91. Art.com should not be allowed to retain the premium price profits
22 and/or additional sales generated from the sale of products that were unlawfully
23 marketed, advertised and promoted. Allowing Art.com to retain these unjust profits
24 would offend traditional notions of justice and fair play and induce companies to
25 misrepresent key characteristics of their products in order to increase sales.

26 92. Thus, Art.com is in possession of funds that were wrongfully retained
27 from Plaintiff and Class members that should be disgorged as illegally gotten gains.

28 //

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of the Class, respectfully prays for following relief:

1. Certification of this case as a class action on behalf of the Class defined above, appointment of Plaintiff as Class representative, and appointment of his counsel as Class counsel;

2. A declaration that Art.com's actions, as described herein, violate the claims described herein;

3. An award of injunctive and other equitable relief as is necessary to protect the interests of Plaintiff and the Class, including, *inter alia*, an order prohibiting Art.com from engaging in the unlawful act described above;

4. An award to Plaintiff and the Class of restitution and/or other equitable relief, including, without limitation, restitutionary disgorgement of all profits and unjust enrichment that Art.com obtained from Plaintiff and the Class as a result of its unlawful, unfair and fraudulent business practices described herein;

5. An award of all economic, monetary, actual, consequential, and compensatory damages caused by Art.com's conduct;

6. An award to Plaintiff and his counsel of their reasonable expenses and attorneys' fees;

7. An award to Plaintiff and the Class of pre and post-judgment interest, to the extent allowable; and

8. For such further relief that the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff, on behalf of himself and the Class, hereby demands a jury trial with respect to all issues triable of right by jury.

1 DATED: February 16, 2016

THE WAND LAW FIRM

2
3 By: /s/ Aubry Wand

4 AUBRY WAND

5
6 DATED: February 16, 2016

SCHNEIDER WALLACE COTTRELL
KONECKY WOTKYNs LLP

8
9 By: /s/ Todd M. Schneider

TODD M. SCHNEIDER

10 JASON H. KIM

11 KYLE G. BATES

12 *Attorneys for Plaintiff*

Figure 1: Sale advertised on www.posters.com on January 29, 2016 (relevant provisions circled in red).

www.posters.com — Posters.com - Cheap Posters, Regular Discounts for Art

POSTERS.COM

FEATURED DEAL / BROWSE BY POSTER SIZE / POPULAR SEARCHES / **COUPONS** / COLLEGE STUDENT?

Receive Deal Alerts:

THE BATTLE OF CHAMPIONS
DEADPOOL KILLS DEADPOOL
WED. July 3rd
ADMISSION: Guilty
RESERVED: not in the least
MARVEL

CURRENT FEATURED DEAL

DEADPOOL COMIC BOOK POSTER

The humorous ninja finally gets his own Marvel movie! This poster features the character flashing his weapons and posing heroically above his name. If you're looking for the perfect comic illustration wall poster this season, you've found it!

\$12.99 **ADD TO CART**

\$8.44 With 35% Coupon AWR946

Don't miss out! Price and availability subject to change after Thursday February 04, 2016.

f
t
p
g+
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M
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+

Figure 2: on January 29, 2016, the consumer is automatically redirected to www.allposters.com after clicking “ADD TO CART” on www.posters.com. The item is also automatically added to the consumer’s shopping cart on www.allposters.com (relevant provisions circled in red).

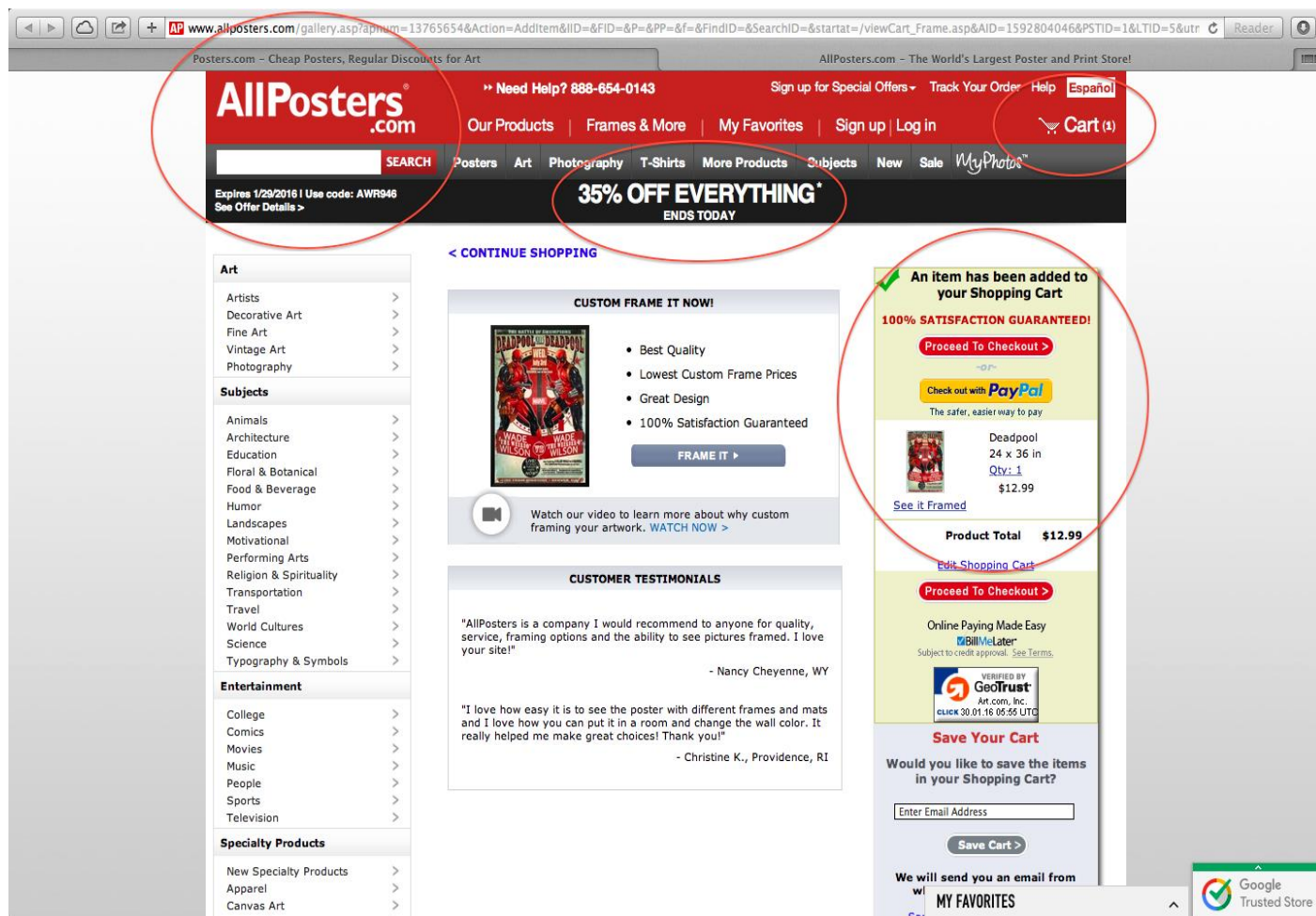


Figure 3: On January 29, 2016, after clicking on the “Checkout” button, the consumer is given the option of entering the Sale Code (relevant provisions circled in red).

https://www.allposters.com/adc.net/root/pages/checkout/default.aspx#_Top — AllPosters.com - The World's Largest Poster and Print Store!

Posters.com - Cheap Posters, Regular Discounts for Art

AllPosters.com

Expires 1/29/2016 | Use code: AWR946
See Offer Details >

Checkout

35% OFF EVERYTHING*
ENDS TODAY

If you are entering a college address, please include your PO Box or dorm location

Returning Customer?
Log in to enjoy faster, easier checkout or checkout as a guest below.

Log In To Your Account

1. Enter Address Information

Shipping Address * Required field

First Name*
Last Name*
Company Name or College PO Box
Country* United States
Address Line 1*
Address Line 2
City*
State/Territory* Select a State
ZIP/Postal Code*
Phone
Email Receipt to* Privacy Policy

☐ This order is a gift purchase

What is the purpose of this purchase? (optional)
☐ Personal/Home
☐ Business/Company

Billing Address

☐ Same as shipping address
☐ Enter a new billing address

Shopping Cart

Deadpool...
24 x 36 in
Remove

Qty: 1 \$12.99

Subtotal: \$12.99
Shipping: \$4.99
Total: \$17.98

Coupon

Coupon Code Apply

100% SATISFACTION GUARANTEED
If for any reason you are not completely satisfied with your purchase, you may return it within 30 days.
See Details

ACCREDITED BUSINESS
McAfee SECURE
OUR PRIVACY POLICY

Google Trusted Store

Figure 4: Example of Perpetual Sale advertised on www.art.com on October 13, 2015 (relevant provision circled in red; example of regular advertising, and not a Concurrent Sale, circled in blue).

www.art.com — Art.com — Posters, Art Prints, Framed Art, and Wall Art Collections

Search All Art 866-250-1800 SAVED SIGN UP / LOG IN

BEST SELLING ART SUBJECTS ARTISTS ROOMS PRODUCT TYPES PHOTOS TO ART SHOP ALL ART FRAME YOUR ART SHOP SALE

45% OFF SALE EXTENDED* - ENDS TONIGHT USE CODE: **MZN898** ENDS: 10/13/15

INTRODUCING

FRAME YOUR ART

HAVE AN UNFRAMED ART PRINT OR PHOTO LYING AROUND AT HOME?
Skip the visit to frame shops and let us custom frame it for you by mail.
[learn more & start framing >](#)

WE MAKE CUSTOM FRAMING AS EASY AS MAILING A LETTER

- CHOOSE A FRAME AND CUSTOMIZE**
Browse frame styles and mats, and use our visualization tool to find a look you love.
- SEND IN YOUR ART OR PHOTO**
Once you've placed your order, we'll send you prepaid packaging for shipping for your artwork.
- ENJOY YOUR READY-TO-HANG PIECE**
Once we've received your art, we'll get to work. It'll take a few days to complete and ship to most U.S. locations.

OUR PRICES ARE SIMPLE & AFFORDABLE
Free shipping both ways with frames handcrafted in the U.S.A.

SIZES	FRAME PRICE
5" x 7"	\$59
Up to 9" x 12"	\$79
Up to 16" x 20"	\$99
Up to 24" x 36"	\$139
Up to 32" x 40"	\$189

[learn more & start framing >](#)

MY GALLERIES

Figure 5: Example of Perpetual Sale advertised on www.allposters.com on October 13, 2015 (relevant provisions circled in red).



Figure 6: Example of Concurrent Sale advertised on www.art.com on October 25, 2015 that differs from the Perpetual Sale (Perpetual Sale circled in red; Concurrent Sale circled in blue).

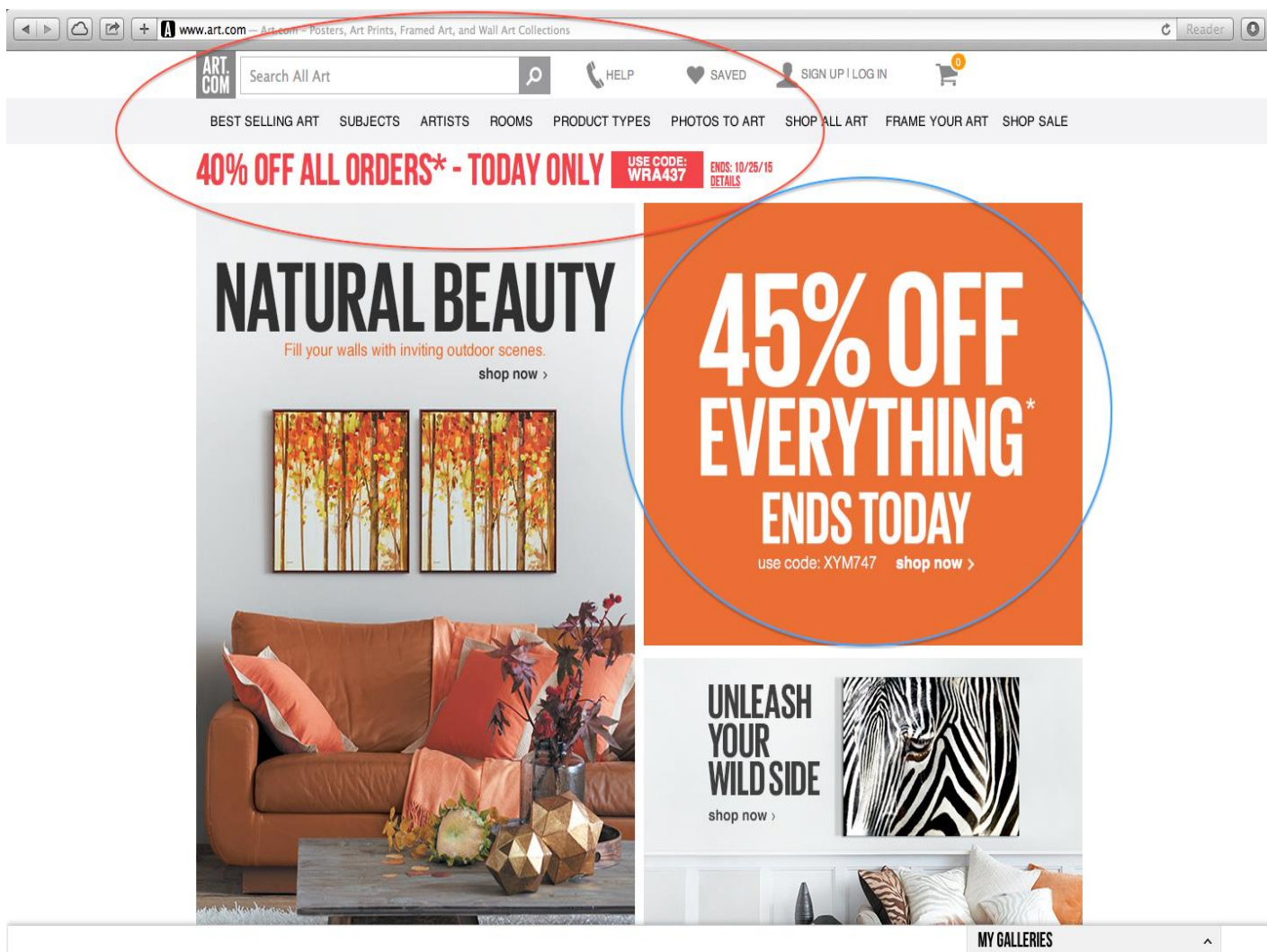


Figure 7: Example of Concurrent Sale advertised on www.allposters.com on October 25, 2015 that differs from the Perpetual Sale (Perpetual Sale circled in red; Concurrent Sale circled in blue).



Figure 8: Example of Concurrent Sale advertised on www.art.com on November 17, 2015 that is the same as the Perpetual Sale (Perpetual Sale circled in red; Concurrent Sale circled in blue).

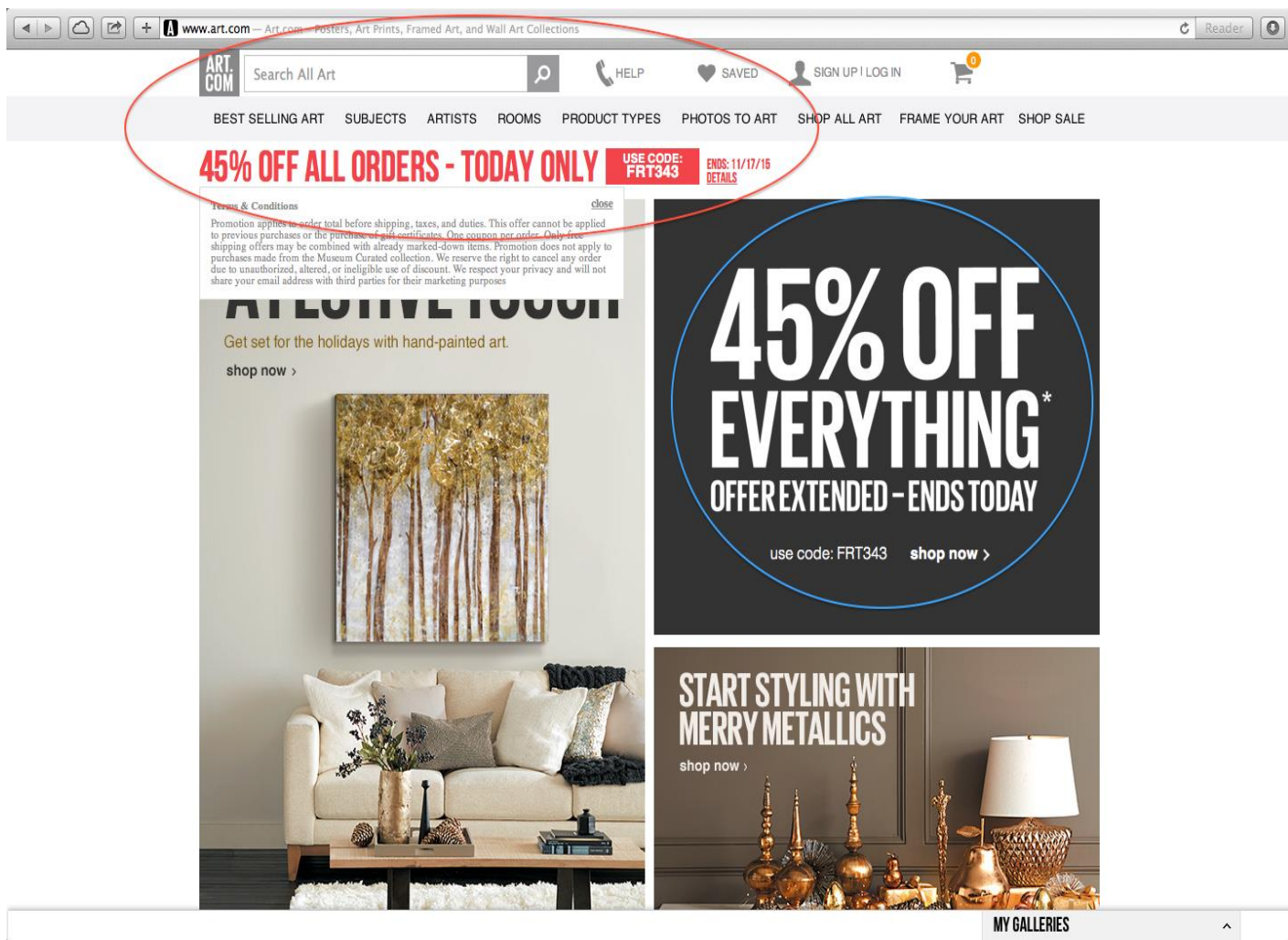


Figure 9: Example of Concurrent Sale advertised on www.allposters.com on November 17, 2015 that is the same as the Perpetual Sale (Perpetual Sale circled in red; Concurrent Sale circled in blue).



Figure 10: Example of a pop-up window on www.allposters.com when a consumer clicks on the “See Offer Details” link right below the advertised Perpetual Sale (relevant provisions circled in red).

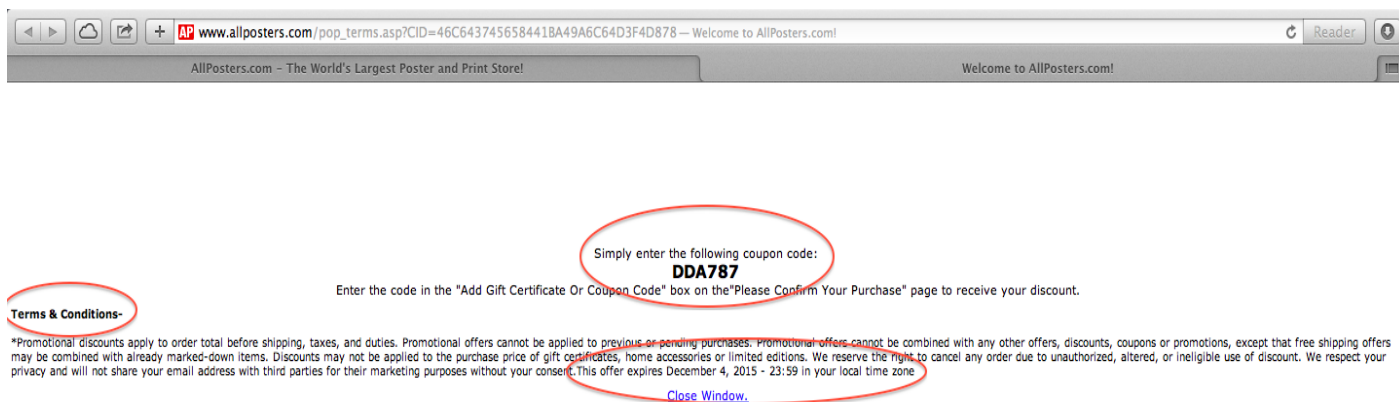


Figure 11: The bottom of the homepage of www.posters.com on January 29, 2016 (relevant provisions circled in red).

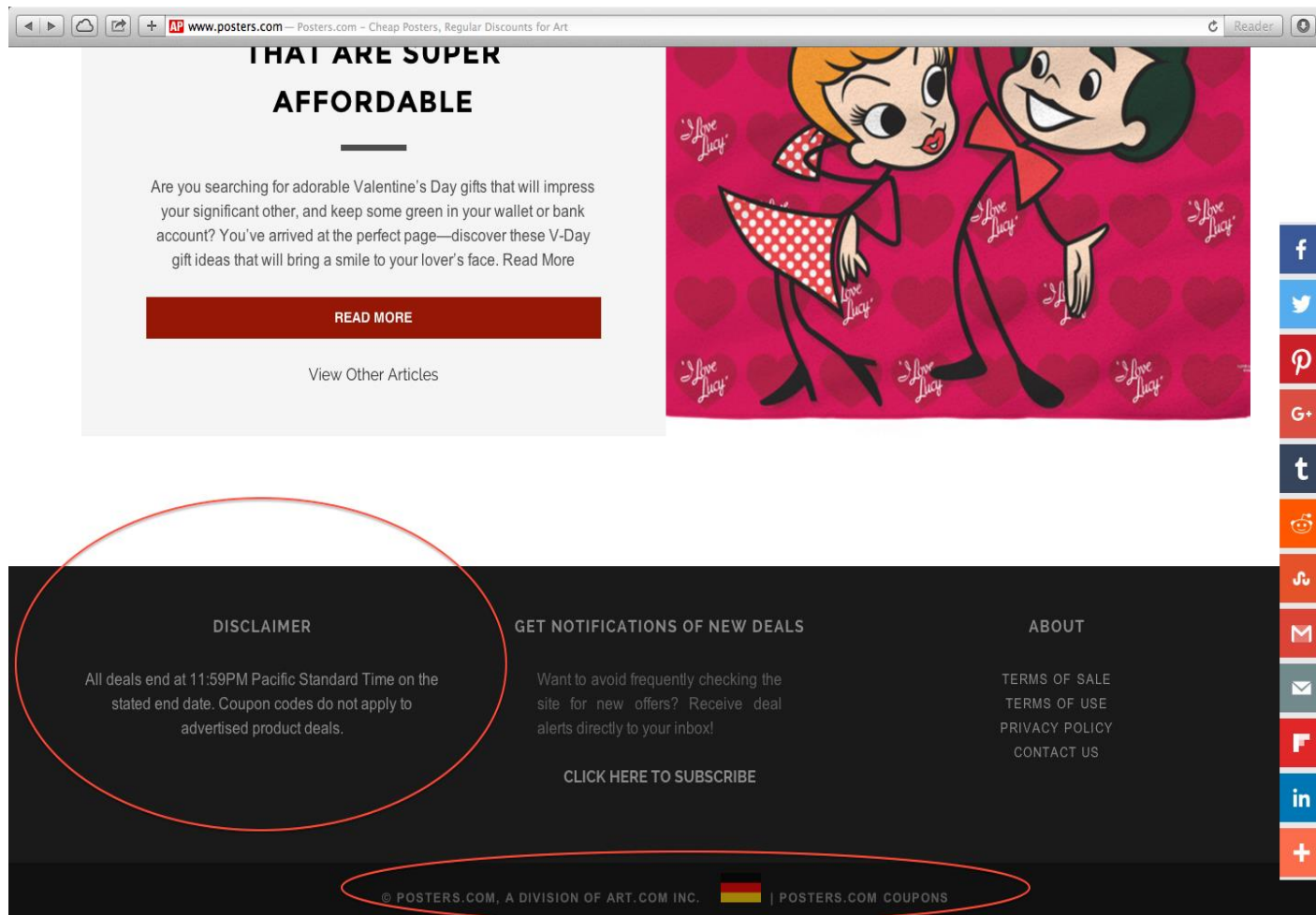


Figure 12: Search result on Google on January 29, 2016 for “posters” yields an ad for www.allposters.com with the Perpetual Sale clearly visible to the consumer (relevant provisions circled in red).

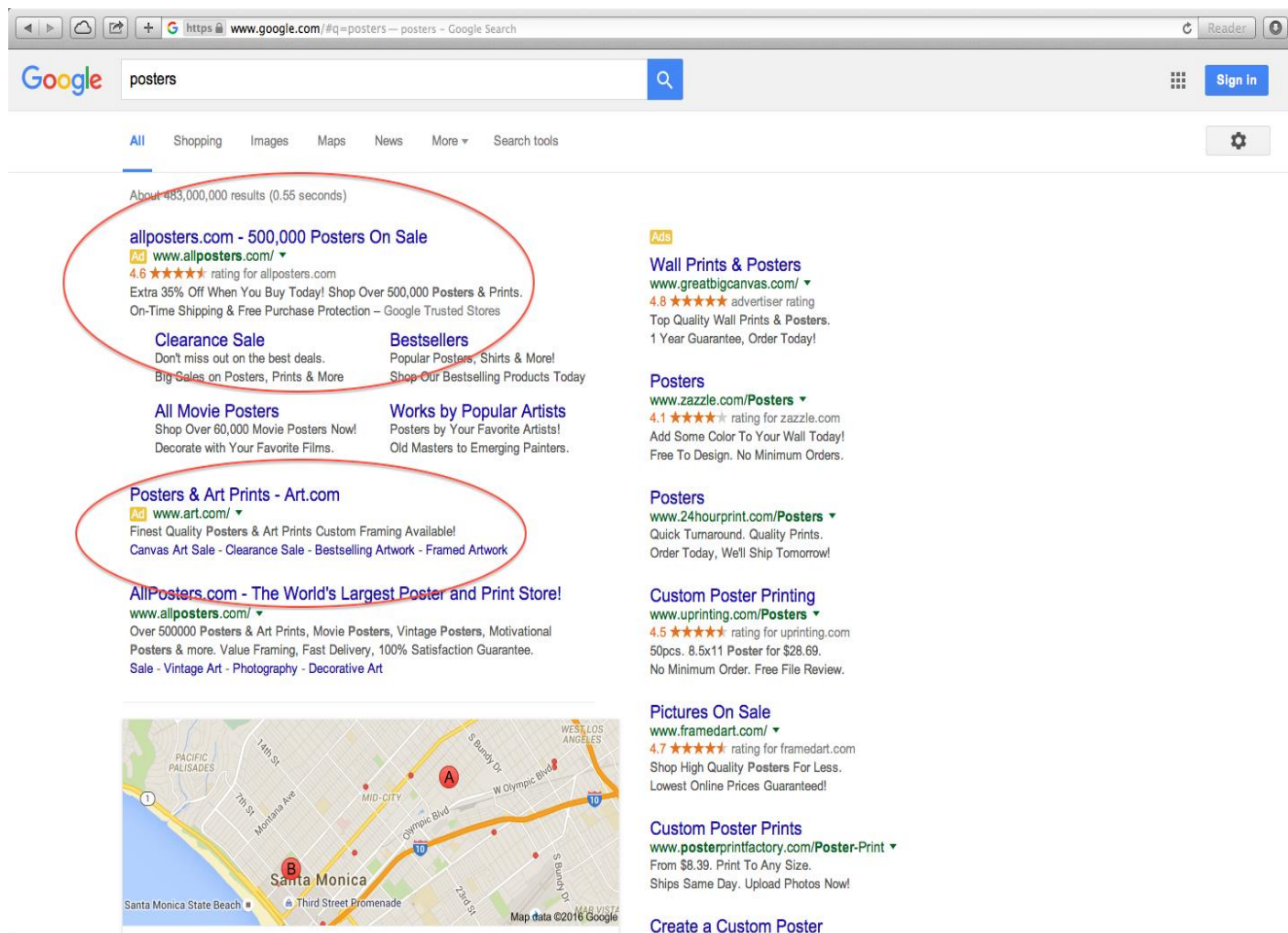


Figure 13: Email sent by allpostersemail@em.allposters.com on December 28, 2015 at approximately 3:04 PM reminding consumers of the Perpetual Sale.



Figure 14: “Terms of Sale” section on www.allposters.com on January 29, 2016 (relevant provisions circled in red).

www.allposters.com/help/termsOfSale.html — AllPosters.com — The World's Largest Poster and Print Store

AllPosters.com Need Help? 888-654-0143 Sign up for Special Offers Track Your Order Help Español

Our Products | Frames & More | My Favorites | Sign up | Log in Cart (1)

Posters Art Photography T-Shirts More Products Subjects New Sale MyPhotos™

Expires 1/29/2016 | Use code: AWR946 See Offer Details >

35% OFF EVERYTHING*
ENDS TODAY

Terms of Sale

These Terms of Sale apply to all offers made by Art.com Inc., all orders placed by you and all agreements concluded between us in relation to the products and services offered on this website.

Pricing

Notwithstanding the product prices shown on the website, we cannot confirm the price of an item until you order. Despite our best efforts, a small number of the items shown on the website may be mispriced as a result of price changes that are implemented at or about the time of your visit to the website. However, we do NOT charge your credit card until after your order has entered the shipping process. If an item's correct price is higher than our stated price, your sole recourse is cancellation of your order.

Acceptance of Order

We reserve the right to refuse or cancel any order. In such event your sole recourse shall be the return of amounts paid by you related to such order (if any).

Sales Tax

Items shipped to destinations in the states of California, Colorado, Connecticut, Kansas, Maine, Minnesota, Missouri, New York, North Carolina and Ohio are subject to tax. No sales tax is charged when purchasing gift certificates; however, purchases paid for with gift certificates may be subject to tax.

The following information is provided to purchasers who request items to be shipped to Kentucky, Oklahoma or South Dakota. We are not required, and do not collect sales or use tax for your state. Purchases shipped to your state are subject to use tax unless they are specifically exempt from taxation. Your purchase is not exempt merely because it is made over the Internet, by catalog, or by other remote means. Your state requires that you report all purchases that were not taxed and pay tax on those purchases. See your state's department of revenue or taxation website for appropriate forms and instructions.

Return Rights and Instructions

The quality of your experience is our priority. In the event that you are not satisfied with any item, you may return it within 30 days of receipt for a replacement or refund for the price of the product. Shipping charges will not be refunded. See below to determine how to proceed based on your reason for return.

Reason for Return:
My order was damaged during delivery (or other quality concerns).

Easy Photo Return
If your order arrived in less than satisfactory condition, speed up your return by following these simple steps:

1. Take a digital photo of your damaged product and the shipping container as it arrived in (if damaged).
2. Complete an [Easy Photo Return Form](#) by including your photo.

MY FAVORITES

Google Trusted Store

Figure 15: October 11, 2015 email from Art.com confirming Plaintiff's purchase.

